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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 152

STANWOOD A. DEMERS,
PETITIONER,

v.

EDWIN C. BROWN ET AL.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

STANWOOD A. DEMERS,
Pro Se
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West Warwick, Rhode Island

Blanchard Press, Inc., Boston, Mass. — Law Printers

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

(A) STANWOOD A. DEMERS of Mishnock Rd. West Greenwich, Rhode Island, proprietor of a retail business selling, repairing and instructing musical instruments as the STANWOOD MUSIC CO., of West Warwick, Rhode Island, files this as his petition for WRIT OF CERTIORARI to the Supreme Court of the United States of America, seeking review and correction of errors of law of a decision of the Federal Circuit Court of Appeals in this action Civil Case No. 6456, to uphold a decision of the Federal District Court for the District of Rhode Island, to dismiss the case C. A. 3315 of *Stanwood A. Demers* v. *Edwin C. Brown, Cornelius B. Collins, Joseph L. Byron, Robert Finkelstein, Robert F.*

Picard, George Forcier Jr. and Richard S. Staples hereafter to be identified in this petition as the Rhode Island State Board of Education.

(B) This case No. 6456 came on to be heard by the United States Court of Appeals for the First Circuit on April 5th 1965. Judgment was entered on April 9th. 1965 to affirm the judgment of the District Court for the District of Rhode Island appealed from by plaintiff.

Plaintiff now seeks the review of this judgment by the United States Court of Appeals by this Supreme Court of the United States by issuance of its Writ of Certiorari pursuant to 28 U.S. Code # 1254 Section (1); 28 U.S.C. # 1343 and the Fourteenth Amendment to the Federal Constitution.

(C) Petitioner seeks review of the following: Is the decision in this case #6456 by the Federal Circuit Court of Appeals for the First Circuit a just and legal decision when it—(a) Sanctions the *continuation* of practices violating a valid state statute and the constitutional rights of a citizen; (b) permits violations of prohibitions of the Fourteenth Amendment, pertaining to uses of public buildings and funds; (c) refuses legal redress of the deprivation of plaintiffs' rights to equal protection of the law; (d) concurs with a State Supreme Court Opinion in this case, 201 A 2d. 477, that a general law can be applied to plaintiff particularly, and some others but *not all;* (e) sanctions the departure from accepted and legally specified judicial proceedings by a Federal District Court which denies plaintiff of his constitutional rights to due process of law—and be a decision compatible with decisions of this court and with the basic rights conveyed to a citizen of the United States by the Federal Constitution?

(D) The following constitutional provisions, statutes and regulations are cited and their pertinent texts are appended hereon:

(1) The Fourteenth Amendment to Federal Constitution.
(2) Federal Procedure U.S.C. 28 #1343 section (3) & (4) Civil Rights and Elective Franchise.
(3) 28 U.S.C. #2284 Three Judge District Court; composition; procedure
(4) 28 U.S.C. #2281 Injunction against enforcement of State Statute; three judge court required.
(5) 28 U.S.C. Federal Procedure Rule 12 Section B Defense and Objections.
(6) 28 U.S.C. Civil Procedure Rule 60 Relief from Judgment or Order.
(7) Title 16-39-2 R.I. Statute; APPEAL OF SCHOOL COMMITTEE ACTIONS TO COMMISSIONER.
(8) Title 16-39-3 R.I. Statute; APPEAL TO STATE BOARD.
(9) Title 16-38-6 R.I. Statute; COMMERCIAL ACTIVITIES PROHIBITED —Conduct of Teachers
(10) Title 16-1-4-(i) POWERS AND DUTIES—State Board of Education, Rhode Island.

(E) Although the petitioner makes every effort to be as brief as possible, in order to present an accurate understanding of the facts relative to the question in section B of this petition and subsidiary questions, it is necessary to set forth the travel of this case from its inception as follows:

(1) On November 13th., 1962 plaintiff appeared before the School Committee of the town of Coventry, Rhode Island, with counsel, for a public hearing previously requested in writing as advised by the Commissioner of Education for the State of Rhode Island, Dr. William P. Robinson Jr. hereafter to be identified as Commissioner. Complaint was registered that, certain practices of offering musical instruments for rent and

sale and the selling of services of instruction, on same, directly to students was injuring plaintiff as he was in the business of providing the same products and services in the local area under free enterprise. Although admissions of the School Officers were made that these facts were true, the school committee tabled the complaint, telling plaintiff to make himself known to the School Officers.

(2) On December 7th., 1962, plaintiff requested in writing that a further hearing be held before the Coventry School Committee in order to protest the activities testified to at previous hearing by school officers. Plaintiff appeared without counsel and declared, these practices complained of were in violation of Rhode Island Statute Title 16-38-6, The committee informed plaintiff he should read the rest of the laws and although they sympathized with him, they could do nothing for him.

(3) The Commissioner of Education having advised plaintiff that he could only grant a hearing under Statute 16-39-2-R.I. if a complaint is first lodged with a school committee and they render an adverse decision and as plaintiff now had such a decision rendered, his counsel composed a letter to the Commissioner mailed on Jan. 24th 1963 setting forth the facts in the case and asked for the commissioners decision as to the legality and propriety of said practices. A letter was received by plaintiff from the Commissioner on March 6th. 1963 which informed him, without a hearing, that there was no legal basis for his complaint.

(4) On May 28th. 1963 plaintiff having been released by counsel, requested in writing a hearing before the

State Board of Education pursuant to Title 16-39-3 in order to protest commissioner's decision and present complaint of practices of the Coventry School Committee in violation of State laws and laws governing the use of Public Buildings and Property. Plaintiff is informed in writing by the board that they could not grant him a hearing before the board but if he still desired a hearing the request should be made to the commissioner and it would be granted.

(5) Hearing is duly requested by plaintiff, granted and held by Commissioner on July 5th. 1963. Complaint was presented to commissioner that the commercial practices prevailing in the public schools were in violation of state statutes cited. Although the respondents admitted publicly and by sworn testimony recorded in the certified transcript of the hearing held by commissioner, that the commercial practices prevailed with their authority and direction; although plaintiffs business is that of selling the same services and products and these practices were causing him financial injury by restraint of his trade by public school officers and adversely reflecting upon his reputation and integrity; although the commissioner's written opinion on August 16th 1963 admitted the finding of facts, that these commercial practices prevailed, he declared he had the authority and jurisdiction to determine that none of the practices were in violation of the statutes cited by plaintiff or any other laws governing the schools in the state.

(6) Plaintiff appeals the commissioners decision to the State Board of Education pursuant to R.I. Statute Title 16-39-3 and hearing was held on October 10th 1963. Plaintiff presented a cease and desist order,

entered into the certified transcript of the hearing (page 81) directing the State Board of Education to take action to prohibit said practices by virtue of their power and duty under R.I. Statute Title 16-1-4-(i) to enforce the laws cited by plaintiff. Plaintiffs' cause of action was reiterated and he further declared that said practices admitted to by respondents and supported by the Commissioner, were not only in violation of Statute 16-38-6 R.I. but by an opinion of the Rhode Island Attorney General on the private use of a public auditorium and the opinion of the Rhode Island Supreme Court to the Governor on a question of redevelopment, (Vol 76 R.I. page 249 to 255) the use of a public building for a private purpose would be in conflict with the prohibitions of the 14th Amendment to the Federal Constitution (A Federal Question timely and properly presented by plaintiff in the court of the first instance)

(7) Plaintiff is notified in writing on February 14th 1964 by the State Board of Education, that they uphold the action of the Commissioner of Education in plaintiffs' appeal of his decision. There being no remedy prescribed or denied for appeal of a decision, illegal or unconstitutional act of the state Board of Education, plaintiff filed for Writ of Certiorari with the State Supreme Court on March 4, 1964 M.P. 1618 to review the decision of the State Board of Education and correct errors of law.

(8) On April 14th, 1964 oral argument was heard by the State Supreme Court and on June 17th. 1964 the court took action to deny and dismiss the petition and quash the writ issued, by opinion of Justice J. Roberts of the court, without rendering judgment on all the merits of the case.

Although rights of plaintiff conveyed by the Federal Constitution were the basis of relief presented in his application and brief; the opinion of the court, 201 A 2nd. 477 was to refuse to exercise its judicial power to reverse the action of the State Board of Education which denyed plaintiff of his civil right to equal protection of the law, as well as to deny that the constitutional prohibitions of the use of a public building for private purpose require their adherence, a decision contrary to elementary constitutional law. This act by the State Supreme Court further denied plaintiff of protection of his civil right to enforcement of a valid and constitutional state statute equally and constitutionally as well as his civil right to due process of law.

(9) Although plaintiff made preparations to file in this Supreme Court of the United States, a Writ of Certiorari to correct these errors of law in the State Supreme Court, he determined that the Federal District court had the authority and jurisdiction to issue an injunction against the State Board of Education to restrain the continuance of the statutory and constitutional violations upon due complaint being legally presented. The plaintiff seeking only the protection of enforcement and the security of having these practices cease and desist by court order, as well as not desiring to have this relief denied for not using all remedies available, the complaint, recorded in the printed record appended, was filed in the Federal District Court and a motion to dismiss by respondents was heard on September 21, 1964.

As further actions and results of this case are adequately contained in the complete printed record submitted by plaintiff to the Circuit Court of appeals nine copies of which

accompany this petition the following facts relevant to section (c); (d) and (e) of the question presented in Section B of this petition for review, are offered in conclusion:

(10) The decision of the Federal District Court entered in this case on October 13, 1964 to dismiss the case on the grounds that plaintiff failed to state a claim upon which relief can be had, affirmed by the Circuit Court of Appeals opinion appended, is not a valid judgement as it is on the law side of the case and pursuant to 28 U.S.C. # 2281 Injunction Three Judge Court—this single judge court did not have the power to either grant or deny an injunction—Stratton v. St. Louis-Southwestern Ry Co., Ill. 1930, 51 S.Ct. 8, 282 U.S. 10 75 L. Ed. 135.

(11) Procedure of Federal District Court to dismiss case on lack of cause of complaint by denying plaintiff of hearing on merits and opportunity to present evidence in support of complaint, affirmed by the Circuit Court of Appeals, unconstitutionally denies plaintiff of due process of law.

Miller v. *Director, Middletown State Hospital,* 146 F. Supp. 674, affirmed 243 D 2nd 527

Michael v. *St. Paul Mercury Indem. Co.,* D.C. Ark. 1950, 92 F. Supp. 140

Chappel v. *First Trust Co. of Appleton,* D.C. Wis. 1940, 30 F. Supp. 140

Wilson v. *Illinois Cent. R. R. Co.,* D.C. Ill. 1957, F. Supp. 147-513

Mueller v. *Rayon Consultants, Inc.,* D.C. N.Y. 1959, 170 F. Supp. 555

Myers v. *U.S.,* D.C. N.Y. 1958 162 F. Supp. 913

(12) The United States Circuit Court of Appeals for the First Circuit, it is needless to say, has rendered a decision in this case on April 9th 1965 that is void as it concurrs with practices and decisions that are unconstitutional and without foundation in law—and I certainly hope without precedent. The application of procedural rule of statute of limitations, affirmed by the Federal District Court and Circuit Court of Appeals submitted by defense on December 7th. 1964 and April 9th 1965 before the Court of Appeals as well as the decision of the Federal Court to refuse to void its previous decision and grant an application for a three judge district court, also affirmed by the Circuit Court, constitutes acts in error of law.

—There can be no applicable procedural ruling as to limitations of time for action or appeal having priority over the Federal Constitution when the cause of action in the case is the continuance of Constitution Violations. The constitutional law must always prevail; be the final dominate determining factor over rulings of lower authorities, especially when these rulings conflict with adherence to the Constitution.

(F) Plaintiffs' argument amplifying the reasons relied on for allowance of the Writ of Certiorari is:

1. Practices violating state statutes and the constitution are admittedly being conducted in and through the public schools in the state of Rhode Island, residence of the plaintiff. These private commercial practices are encouraged, directed and promoted by public school officials.

2. The conduct of these commercial practices by tax supported public institutions, agents of the state and/or the use of public property for these purposes,

presents an impossible competition to plaintiff. These acts cause him grave financial loss; damage his reputation; reflect adversely upon his character and as his business is that of providing the same services and selling the same products under free enterprise, the future and success of his business is being determined by dictatorial power of public officials violating the constitution.

3. All tribunals acting in the case, including the United States Circuit Court of Appeals, are accessories after the fact by their refusal and restraint to grant justifiable and legal relief to plaintiff by enforcement of prohibitions of a valid state statute and the Federal Constitution.

Prayer

There being no further remedy provided plaintiff to seek corrections of errors of law and as he has done his best to secure protection of his rights; seeking grant of remedy and relief by right and not in the words of the defense before the District Court, "Charity"; as he can not, financially, afford to buy what he understands his right to be; as he seeks no more protection of rights than the constitution allows but can not be secure or complacent with less, plaintiff *herein prays* that this court—with its concurrent jurisdiction and power of supervision—will relieve him of the mental anguish and grave financial loss suffered for 11 years, and in the interest of justice, issue its Writ of Certiorari and correct errors of law.

Stanwood A. Demers,
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9 Curson Street
West Warwick, Rhode Island

Appendix A

United States Court of Appeals
For the First Circuit

No. 6456.

STANWOOD A. DEMERS,
PLAINTIFF, APPELLANT,
v.
EDWIN C. BROWN ET AL.,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Before ALDRICH, *Chief Judge*, and MARIS* and BURGER,* *Circuit Judges*.

Stanwood A. Demers, pro se.
Joseph L. Breen, Chief Special Counsel, with whom *J. Joseph Nugent*, Attorney General of Rhode Island, was on brief, for appellees.

OPINION OF THE COURT.
April 9, 1965.

PER CURIAM. This case, in which plaintiff sought to enjoin certain action by the Rhode Island State Board of Education, was dismissed on defendants' motion on the ground that the complaint stated no cause of action. Final judgment was entered October 13, 1964. Having failed to appeal from that judgment, in December the plaintiff filed a motion to vacate. Concededly he had had more than 30 days' notice of the judgment. When the motion to vacate came on for hearing the court stated that it was without

*Sitting by designation.

power to grant it. This was so since there were no new reasons to set aside the judgment. F.R.Civ.P. 60(b). From an order denying the motion, plaintiff appeals.

It must be perfectly apparent that plaintiff is seeking to appeal from the original judgment by indirection after the time has expired. What he cannot do directly he cannot do indirectly. *Perrin* v. *Aluminum Co. of America*, 9 Cir. 1952, 197 F.2d 254.

Plaintiff filed an additional motion requesting a hearing by a three-judge court of his original complaint. The district court expressly stated that it was not passing on this motion, and in fact, no order appears to have been made. If it could be assumed that the district court also denied this so-called alternate motion, and that the plaintiff took a valid appeal therefrom, nevertheless there could be no merit to the appeal because this motion, again, specifically sought to open a complaint that had been finally disposed of.

Affirmed.

On the same day, April 9, 1965, the following judgment was entered:

JUDGMENT
April 9, 1965

This cause came on to be heard on appeal from the United States District Court for the District of Rhode Island, and was argued by appellant, pro se, and by counsel for appellees.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:
(s) ROGER A. STINCHFIELD,
Clerk

Approved:
(s) ALDRICH, CH.J.

Thereafter, on April 26, 1955, mandate issued.

Appendix B

Constitutional Provisions, Statutes & Regulations and Their Pertinent Text Cited Verbatim

(1) Fourteenth Amendment to Federal Constitution

—; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

(2) 28 U.S.C. # 1343 Civil Rights and Elective Franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights,—.

(3) 28 U.S.C. #2284 Three Judge District Court; composition; procedure:

In any action or proceding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of application, he shall immediately notify the chief

judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(4) 28 U.S.C. #2281 INJUNCTION AGAINST ENFORCEMENT OF STATE STATUTES: THREE JUDGE COURT REQUIRED.

An Interlocutory or permanent injunction restraining the enforcement, operation or execution ofa ny State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under state statutes, shall not be granted by any district court or judge therefor upon the grounds of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section # 2284 of this title.

(5) 28 U.S.C. CIVIL PROCEDURE RULE 12 SECTION B Defense and objection.

—If, on a motion asserting the defense number (6) to dismiss for failure of the pleadings to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(6) 28 U.S.C. CIVIL PROCEDURE, RULE 60 RELIEF FROM JUDGMENT OR ORDER.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence, Fraud etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from final judgment, order or proceeding for the

following reasons: —(4) the judgment is void—, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(7) APPEAL OF SCHOOL COMMITTEE ACTIONS TO COMMISSIONER. Rhode Island Title 16-39-2—General Laws

Any person aggrieved by any decision or doings of any school committee or in any matter arising under any law relating to schools or education may appeal to the commissioner of education who after notice to the parties interested of the time and place of hearing, shall examine and decide the same without cost to the parties involved.

(8) APPEAL TO STATE BOARD

Rhode Island Title 16-39-3 General Laws

Any decision of the commissioner in such matters shall be subject to an appeal to and review by the board of education.

(9) COMMERCIAL ACTIVITIES PROHIBITED — Conduct of teachers, Rhode Island Title 16-38-6 General Laws

—, Excepting the sale of school lunches under rules and regulations prescribed by the school committee of the town or city, no article shall be sold or offered for sale to public school pupils, or teachers on any public school premises, nor shall any article be sold through the agency of pupils in the public schools. —; nor shall any teacher in any public school, at any time other than during the regular summer vacation of the public schools, accept any fee or gift for the tutoring of any child regularly under his instruction; nor shall any person distribute through or in the public school any circular, sample, package, coupon, ticket or other similar advertising matter. This section shall not be construed to forbid requiring or accepting from a pupil a deposit of a reasonable amount of money as a

guaranty for the return of school property other than the books and supplies loaned free of charge, provided that the school committee shall make suitable rules and regulations for the safekeeping and return of such deposits; nor shall it be construed to forbid the acquisition by pupils at reasonable prices of articles made in industrial, manual training, domestic arts or other similar classes, under suitable rules and regulations adopted by the school committee.

R.I. General Law 1938 ch 198

(10) POWERS AND DUTIES Rhode Island Title 16-1-4-i

The state board of education shall have the power and shall be required:

(i) To enforce the provisions of all laws relating to schools and education.